



December 14, 2010

# Executive Summary

## USCIS EB-5 (Immigrant Investor) Stakeholder Quarterly Engagement

### Overview

On October 14, 2010, U.S. Citizenship and Immigration Services (USCIS) Service Center Operations (SCOPS) Directorate and the Office of Public Engagement (OPE) hosted the EB-5 Immigrant Investor Quarterly Engagement. OPE advised participants that the session was for USCIS to listen to the views and information of individual stakeholders and not for the purpose of obtaining group or consensus advice.

SCOPS provided updates about various aspects of the program followed by a discussion of issues related to the economic analyses in EB-5 cases by the USCIS economist.” Additionally, USCIS shared a presentation that was tailored to respond to topics, themes and responses to general questions posed by stakeholders prior to the engagement.

### Updates

- **EB-5 Statistics and Case Processing Times**

USCIS shared an overview of filing receipts from fiscal year 2005 to fiscal year 2010, for Form I-526 Immigrant Petition by Alien Entrepreneur and Form I-829 Petition by Entrepreneur to Remove Conditions. In fiscal year 2010, a total of 1,886 EB-5 visas were issued, which represents a significant decline from fiscal year 2009, when a total of 4,219 EB-5 visas were issued.

USCIS leadership establishes target processing times for EB-5 related petitions and thus far, current processing times are at or within one month of the targeted processing time. Of special note is the processing of regional center amended proposals that have a four month targeted processing time, but are currently being processed within one month. Also, cases in which a Request for Evidence (RFE) was issued are typically finalized within 30 days of receipt of the response to the RFE.

USCIS established a four month targeted processing time for Initial Regional Center designation proposal. At present, the processing time for these cases is within five months. Some of the variables affecting the processing times are:

- Centralization of adjudications at one service center which allows for better management of caseload;
- Security issues that need to be resolved before a case may progress to the next processing stage; and
- The complexity of a given case may require research and case review that adds to the adjudication timeframe.

It should be noted that processing times for individuals filing non-regional center affiliated Forms I-526 Immigrant Petition by Alien Entrepreneur (Form I-526) will experience longer processing times than those who file Form I-526 based upon an investment made through a regional center. Adjudicative resources are geared towards I-526 petitions that are related to regional centers because the law permits priority to be given to regional center affiliated petitions. However, each caseload is processed according to first in, first out procedures.

To address the increasing EB-5 case volume and further reduce EB-5 case processing times, USCIS plans to significantly augment the EB-5 team at the California Service Center. Experienced Immigration Service Officers have been selected from a pool of volunteers. Training efforts will include formal classroom training, and hands-on EB-5 case review and discussions, followed by mentoring by experienced EB-5 Immigration Service Officers.

- **Form I-924 & Form I-924A**

Effective November 23, 2010, USCIS will require the use of Form I-924, Application for Regional Center under the Immigrant Investor Pilot Program, for an entity to request designation as a Regional Center. USCIS also published Form I-924A, Supplement to Form I-924 (Form I-924A), which will be used to enable customers to adhere to the yearly regional center reporting requirement. Although published on November 23, 2010, Form I-924A will not be required to be filed by any regional center until after the close of fiscal year 2011.

The data collected via Form I-924A will be published externally, on USCIS.gov, for each fiscal year following the publication of Form I-924A. This will allow the agency to more efficiently provide this information to various stakeholders.<sup>1</sup>

- **EB-5 Inquiries and EB-5 Mailbox Auto-Reply**

Stakeholders were reminded that USCIS provides a vast amount of information on USCIS.gov. The “EB-5 Inquiries” web page contains information on the type of questions that the EB-5 team may respond to through their dedicated mailbox at [USCIS.ImmigrantInvestorProgram@dhs.gov](mailto:USCIS.ImmigrantInvestorProgram@dhs.gov). Recently, an automatic reply was added to this email account to provide customers with links to various USCIS EB-5 pages and to other EB-5 public information.

- **EB-5 Expedite Requests and Form I-526 Premium Processing**

While the law does permit that priority be given to regional center affiliated petitions, it does not provide the information for USCIS to determine how petitions filed within the regional center

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<sup>1</sup> USCIS does not plan to post ad hoc data it received from approved regional centers in previous years because in many cases the ad hoc data was not comprehensive and was not presented in a manner so that it would be comparative from one regional center to another.

program should be prioritized. However, USCIS has posted to its website national expedite criteria used to prioritize all immigration benefit applications and petitions. Although the agency's national expedite criteria includes "severe financial loss to company or individual," it should be noted that self-imposed financial requirements will not be sufficient to meet this criteria.

At present USCIS is not able to implement premium processing of Form I-526 Immigrant Petition by Immigrant Entrepreneur.

## Principal Themes

- **Economic Analysis**

The USCIS economist shared tips to assist customers to better prepare their filings:

- Multipliers require detailed information. Bear in mind that the analysis depends on the quality of the information;
- Ensure you have a well-reasoned basis for all the numbers, especially when using multipliers;
- It is best to use publicly available sources of information. For example, data obtained from the U.S. Bureau of Labor Statistics;
- Check the economic analysis and business plan numbers to ensure they make sense;
- If using data from a private consulting firm, please provide the methodology; and
- If using Rims II, please include the multiplier tables, to facilitate checking the analysis.

In addition, the USCIS economist highlighted the following points:

- RIMS II and IMPLAN are examples of backward-linked models; meaning the data in the model represents suppliers to the industry rather than customers.
- There should be a balance between competing geographic definitions. For example, sometimes an investor may narrowly define geographic boundaries to maximize the benefit of a targeted employment area and broadly define geographic boundaries for multiplier analysis.
- USCIS does not require that the person preparing the analysis have a degree, e.g. MBA, CPA. The important thing to remember is to provide well-reasoned, reproducible information.

Common pitfalls to be wary of are:

- Use the appropriate geographic region for multipliers; for instance, avoid using state multipliers for county region;
- Ensure you compare similar data elements and offer a reasoned explanation;
- The data needs to make sense;
- Time periods must be level / comparable;
- When making seasonal and non-seasonal adjustments for unemployment, please be specific;
- If using RIMS II, become familiar with the handbook to deal with initial impacts and the backwards linkage model. Ensure to include "induced" as well as direct hire employees and indirect hired employees, as in those hired elsewhere due to an increased demand in a different area, which then goes to another industry.

- **Targeted Employment Area (TEA)**

A stakeholder inquired if it was acceptable, for purposes of defining a TEA, to link a high unemployment area with census tracts or political subdivisions with low unemployment in order to arrive at an aggregate finding of high unemployment when the intent is actually to invest in the low unemployment area. USCIS advised that a TEA determination must be based upon valid statistics

for the TEA area and comply with the statutory requirement that the area has an unemployment rate that is at least 150% of the national average unemployment rate. The data used should comport with the U.S. Bureau of Labor Statistic standards.

- **Regional Center Applications**

In reference to the new Form I-924, Application for Regional Center under the Immigrant Investor Pilot Program and Form I-924A, Supplement to Form I-924, a stakeholder stated that USCIS did not take comments on the forms into account during the final fee rule publication and suggested the comments should be posted with in the docket. USCIS shared that the information is available on the [Office of Management and Budget](#) website.

One stakeholder inquired if it was acceptable to submit a regional center application in which a private equity strategy was used, no specific project was identified, and the investment was made in a targeted employment area, after a regional center approval. The UCSIS economist shared that in this scenario, the process allows for filing an exemplar project that is supported by a business plan and an economic analysis. At this stage, a generic project can be accepted because the actual determination of a TEA will take place at the filing of Form I-526 Immigrant Petition by Alien Entrepreneur, not within the adjudication of the regional center proposal. Also, a private equity strategy is an acceptable fund structure, but advised that the level of complexity needs to be well documented to include easily recognizable job creation estimates.

Stakeholders asked if a regional center can be created in one state and a second regional center in a region. USCIS indicated that it is not uncommon for promoters to be involved in one or more regional centers as there is no prohibition on an individual or an entity making multiple regional center application and upon approval promoting multiple regional centers. USCIS indicated that strong regional centers often focus on projects that involve other domestic investment as all of the jobs created through the entire project can be credited to the EB-5 investors.

A stakeholder inquired how the December 11, 2009, memorandum entitled “Adjudication of EB-5 Regional Center Proposals and Affiliated Form I-526 and Form I-829” that provides information on exemplar documents functioned in practice. USCIS indicated that it took an informal poll and found that there were only 4 regional centers with approvals that included exemplar documents. The agency also indicated that at the present time, there is no mechanism in place to separately track which EB-5 cases included documentation that was previously presented in a regional center application as an exemplar Form I-526 Immigrant Petition by Alien Entrepreneur.

A request was made for USCIS to add additional information to its website about designated regional centers. Stakeholders were informed that the agency is working on determining the type of regional center information that can be shared while continuing to comply with privacy requirements.

- **Job Creation**

In response to a request for general information about how much credit a minority investor may receive for direct and induced jobs, USCIS said the capital investments in a given project do not have to be exclusively from EB-5 sources. However, the EB-5 program requirements must be met, to include:

- Each EB-5 investor meeting the minimum capital investment of \$1,000,000 or \$500,00, and sustaining that investment throughout the period of the investor’s conditional permanent residence; and

- Creating the required minimum number of jobs. In the case of pooled investments, the total number of jobs created and the manner in which these jobs are allocated to each individual investor must be documented.

These eligibility requirements are reviewed when USCIS makes a determination regarding whether the conditions should be removed from the investor's permanent resident status as part of the adjudication of the investor's Form I-829, Petition by Entrepreneur to Remove Conditions.

One stakeholder commented that job creation outside the regional center is sometimes viewed as potentially fraudulent. USCIS plans to further refine the EB-5 Inquiry web page and provide additional information on job creation, as well as other topics of interest like the new Form I-924. In addition, the agency will also include information about the Child Status Protection Act as it relates to dependent children of EB-5 customers.

USCIS was asked if the absence of permits from local authorities and other capital investment project delays are taken into account when determining whether sufficient permanent jobs were created through the investment. USCIS stated that the adjudication of Form I-829 typically takes place approximately 2.5 years from filing Form I-526 Immigrant Petition by Alien Entrepreneur, but that the law allows for a favorable determination to be made in the Form I-829 petition if the documentation shows that sufficient jobs will be created within a reasonable period of time.

- **EB-5 Dependents**

One stakeholder asked what would be the best course of action when an EB-5 dependent beneficiary ages out. USCIS said the agency will continue to process the Form I-526, Immigrant Petition by Alien Entrepreneur, and will determine if the aged-out dependent may benefit from the Child Status Protection act (CSPA).

## Next Steps

- USCIS posted to its website Form I-924, Application for Regional Center under the Immigrant Investor Pilot Program and Form I-924A, Supplement to Form I-924, with corresponding instructions.
- On December 13, 2010, USCIS posted to its website the current policy memoranda titled "Adjudication of EB-5 Regional Center Proposals and Affiliated Form I-526 and Form I-828; Adjudications Field Manual (AFM) Update to Chapters 22.4 and 25.2 (AD09-38)."

Comments may be sent via email to [opefeedback@uscis.dhs.gov](mailto:opefeedback@uscis.dhs.gov). The final date for comments is January 21, 2011.

For more information and to comment, please visit our home page at [uscis.gov](http://uscis.gov) and follow this path: Home > Outreach > Feedback Opportunities > Current Memorandum for Comment.



# Agenda

## EB-5 Immigrant Investor Quarterly Engagement Teleconference (Webinar)

*October 14, 2010*

1:00PM to 3:00PM (ET)

### Discussion Topics

#### I. Introductions

#### II. EB-5 Updates

- EB-5 Case Processing Times & Statistics
- EB-5 Visa Usage
- Form I-924 & Form I-924A
- EB-5 Training
- EB-5 Inquiries and EB-5 Mailbox Auto-Reply
- EB-5 Expedite Requests
- Form I-526 Premium Processing

#### III. EB-5 Economic Analysis

- The Big Picture
- Important Points
- Sources of Information
- Critical Issue
- Common Pitfalls

#### IV. Stakeholder Suggested Topics & Questions

- Crediting Job Creation Outside the RC
- Reporting EB-5 Fraud & Misrepresentation to USCIS
- RC Termination Process
- Reporting RC Terminations to the Public
- RC Termination Impacts on Affiliated Petition Filings
- Material Changes Post-Filing Form I-526
- CSPA Act

#### V. Open Forum



# U.S. Citizenship and Immigration Services

EB-5 Immigrant Investor Program  
Stakeholder Meeting  
October 14, 2010

# I. Introductions



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# EB-5 Stakeholder Meeting Presentation

This presentation is intended to provide a guide for discussion at the stakeholders' meeting and to explain current USCIS policy and practice. It is not intended to be an official statement of USCIS policy, and does not supersede any existing statutes, regulations, or policy memoranda. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law or by any individual or other party in any way.



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## II. EB-5 Updates

- EB-5 Case Processing Times & Statistics
- EB-5 Visa Usage
- Form I-924 & Form I-924A
- EB-5 Training
- EB-5 Inquiries and EB-5 Mailbox Auto-Reply
- EB-5 Expedite Requests
- Form I-526 Premium Processing



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# Regional Center Statistics

- There are currently 114 approved Regional Centers (RCs), operating in 34 states, inclusive of the District of Columbia and Guam.
- A complete list of approved RCs is also available online at <http://www.uscis.gov/eb-5centers> .
- Approximately 90% of the individual Form I-526 petitions filed each year are filed by Alien Investors who are investing in RC-affiliated commercial enterprises.
- There are approximately 83 initial designation RC Proposals and 11 RC Proposals that request amendments to previously approved designation proposals pending with USCIS.



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# EB-5 Individual Petition Filing Receipts FY05 – FY10

Fiscal Year	Form I-526 Petition	Form I-829 Petition
FY10 <i>*Preliminary</i>	1727*	690*
FY09	1028	437
FY08	1257	390
FY07	776	194
FY06	486	89
FY05	332	37



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# Form I-526 Petition Final Actions and Final Action Percentages for FY05 – FY10

Fiscal Year	Form I-526 Approvals	Final Action %	Form I-526 Denials	Final Action %
FY10 <i>*Preliminary</i>	1271*	89%*	153*	11%*
FY09	1262	86%	207	14%
FY08	640	84%	120	16%
FY07	473	76%	148	24%
FY06	336	73%	124	27%
FY05	179	53%	156	47%



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# Form I-829 Petition Final Actions and Final Action Percentages for FY05 – FY10

Fiscal Year	Form I-829 Approvals	Final Action %	Form I-829 Denials	Final Action %
FY10 <i>*Preliminary</i>	253*	83%*	52*	17%*
FY09	347	86%	56	14%
FY08	159	70%	68	30%
FY07	111	69%	49	31%
FY06	106	64%	59	36%
FY05	184	62%	112	38%



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# EB-5 Visa Usage

Fiscal Year	Total EB-5 Visas Issued
FY10 <b>*Preliminary</b>	1886*
FY09	4,218
FY08	1,360
FY07	806
FY06	744



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# EB-5 Case Processing

Form Type	Target Processing Time	Current Processing Time
Form I-526	Five Months	Five Months
Form I-829	Five Months	Six Months
RC Initial Designation Proposal	Four Months	Five Months
RC Amended Designation Proposal	Four Months	One Month

Note: Responses to requests for evidence (RFEs) for individual petitions, and for new or amended RC Proposals are matched with the case file upon receipt of the response. CSC strives to finalize EB-5 cases within 30 days after the responses to the RFEs are received.



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# EB-5 Staffing Increase at the CSC

- USCIS has decided to dedicate additional resources to the adjudication of EB-5 cases at the California Service Center (CSC), in order to better address increasing EB-5 case filing volumes.
- Total EB-5 staffing will be substantially increased by the addition of Immigration Service Officers (ISOs) who have been selected from a pool of volunteers with extensive employment-based experience and/or a strong business-related background.
- An additional EB-5 supervisor is also being added to the program.



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# EB-5 Staffing Increase at the CSC, cont'd

- The new EB-5 ISOs will attend a two-week in-class training course this fall, directed by USCIS SCOPS HQ, which will include training in Forms I-526, I-829, I-924 and I-924A adjudications.
- Hands-on case review followed by case-specific discussions in a group setting will be an integral part of this training effort.
- Experienced EB-5 ISOs will serve as mentors to the new EB-5 ISOs following the conclusion of the in-class training course, which will result in a reduction of EB-5 case adjudicative resources in the short-term.
- USCIS believes that the short-term investment in this training initiative will be beneficial to the program in the long-term, and will ultimately result in a reduction of EB-5 case processing times.



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# Form I-924 & I-924A

- The USCIS Final Fee Schedule “Final Fee Rule” was published in the Federal Register on September 24, 2010. [FR 75 58961]
- As a result of this final rulemaking, USCIS will be implementing the Office of Management and Budget (OMB) approved Form I-924, Application for Regional Center Under the Immigrant Investor Pilot Program, and Form I-924A, Supplement to the Form I-924 on November 23, 2010 (11/23/2010). [See Docket ID: USCIS-2009-0033 Agency: USCIS RIN: 1615-AB80 at [www.regulations.gov](http://www.regulations.gov).]



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# Form I-924 & I-924A, Cont'd

- In addition, the “Final Fee Rule” also amends an EB-5 regulation which will take effect on 11/23/2010, 8 CFR 204.6(m)(6) regarding certain RC-activity information collection procedures and procedures for the termination of approved RCs in certain instances.
- USCIS will be posting the forms, instructions to the forms, and an update on the website that will provide general information regarding the implementation of these forms prior to the 11/23/2010 effective date. In the meantime the forms and instructions may be accessed at [www.regulations.gov](http://www.regulations.gov) as previously noted.



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# Form I-924

- **Effective 11/23/2010, Form I-924, Application for Regional Center under the Immigrant Investor Pilot Program, will be required for the filing of both initial RC applications and amended RC applications. The Form I-924, which will have a filing fee of \$6,230 will:**
- **Clarify filing requirements for the RC designation;**
- **Improve the quality of RC applications;**
- **Better document eligibility for the Pilot Program;**
- **Alleviate content inconsistencies among applicants' submissions; and**
- **Support a more efficient process for adjudication of the RC applications.**



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# Form I-924A Supplement

- The Form I-924A, Supplement to Form I-924, will be the vehicle for a yearly RC reporting requirement pursuant to newly amended 8 CFR 204.6(m)(6).
- Each approved RC will be required to file the I-924A to report RC-related activities for the preceding fiscal year within 90-days of the end of the fiscal year (on or before December 29<sup>th</sup> of the calendar year in which the fiscal year ended.)
- **The submission of Form I-924A will not be required to report on RC EB-5 activity in FY10, but will be required to be filed by all approved RCs for FY11 on or before December 29, 2011.**
- There is no filing fee for the Form I-924A.
- USCIS plans to publish summarized RC data in order to be responsive to requests for this information from a broad spectrum of USCIS's external stakeholders, to include members of Congress, other federal agencies, state agencies, and major media outlets.



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# Proposed I-924A, Cont'd

- USCIS plans to publish data provided each year by all designated regional centers, to include attributes of the RC-affiliated capital investments, such as:
  1. the geographic areas and industry categories receiving investment capital;
  2. The volume of regional center affiliated capital invested, and;
  3. The number of jobs created or maintained as a result of the capital investments.

This summarized data will be published on the USCIS Web site for each fiscal year following the publishing of the Form I-924A.

**Note: USCIS does not plan to publish any data from the “ad hoc” data submissions that have been received from approved RCs regarding their EB-5 activities in prior years.**



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# EB-5 Premium Processing

USCIS has decided not to implement EB-5 Premium Processing for Form I-526 Petitions at the present time, due to:

- The need for further streamlining of the RC designation and Individual Petition adjudicative processes.
- IT infrastructure issues.
- Lack of sufficient EB-5 adjudicative resources to meet statutory and regulatory Premium Processing Service Requirements.

USCIS will reexamine this issue as these program constraints are addressed over time.



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# EB-5 Inquiries

- Reminder: USCIS has published a page entitled “EB-5 Inquiries” on the [www.uscis.gov](http://www.uscis.gov) website that outlines how the public may make inquire on EB-5 related matters.
- This webpage may be accessed from the USCIS homepage as follows:
- Home > Working in the United States > Permanent Workers > Employment-Based Immigration: Fifth Preference EB-5.



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# EB-5 Inquiries, Cont'd

The “EB-5 Inquiries” page clarifies:

- The EB-5 inquiries that are appropriate to send to the EB-5 mailbox at [Uscis.immigrantinvestorprogram@dhs.gov](mailto:Uscis.immigrantinvestorprogram@dhs.gov), and;
- Other avenues that can be used to send questions or inquire to USCIS that are not suitable for the EB-5 mailbox.

**Note:** The CSC has recently implemented an informational “auto-reply” that is now provided in response to emails that are sent to the EB-5 Mailbox. This auto-reply contains some great information and links to USCIS web-pages and other sites that the public can use to obtain EB-5 related information.



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# EB-5 Expedite Requests

- Public Law No. 102-395 provides for priority to be given to Regional Center-affiliated individual petitions. However, the statute does not provide criteria for USCIS to use to determine how petitions filed under the regional center program should be given priority over one another.
- USCIS has national expedite criteria for all petitions and applications, which are posted on the USCIS website.
- The petitioner must demonstrate that one or more of the expedite criteria have been met to be granted an expedite.



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# EB-5 Expedite Requests, Cont'd

- The Director of the CSC follows the national expedite criteria when determining whether to grant an expedite request for an EB-5 petition.
- One of the national expedite factors is the “severe financial loss to a company or to an individual.” Most of the EB-5 related expedite requests that CSC receives are based on this factor.
- Most EB-5 petitions contain escrow agreements which specify that the capital investment may not be released into the investment project until the approval of the Form I-526 petition.
- USCIS would be inundated by expedite requests if expedite requests were granted based upon these self-imposed financing arrangements.



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# EB-5 Expedite Requests, Cont'd

- Expedite requests for EB-5 cases should be directed to the EB-5 program mailbox at: [Uscis.immigrantinvestorprogram@dhs.gov](mailto:Uscis.immigrantinvestorprogram@dhs.gov) .
- USCIS believes that the most equitable approach is to adjudicate EB-5 petitions in accordance with our first-in, first out procedures.



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# Q & A on EB-5 Updates

- EB-5 Case Processing Times & Statistics
- EB-5 Visa Usage
- Form I-924 & Form I-924A
- EB-5 Training
- EB-5 Inquiries and EB-5 Mailbox Auto-Reply
- EB-5 Expedite Requests
- Form I-526 Premium Processing



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# III. EB-5 Economic Analysis

- The Big Picture
- Important Points
- Sources of Information
- Critical Issue
- Common Pitfalls



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# The Big Picture

- Using multipliers to estimate impacts requires the user to provide detailed information including: geographic scope, industry data, and initial changes in output, employment, & earnings.
- This information stems from a well-reasoned business plan.
- Use publicly available sources for data.
- To ensure analysis is readily reproducible include source data and RIMS II tables (if applicable).



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# Important Points

- Essential definitions:
    - Direct effects (output, employment, or income) are those occurring to the firm that exports the additional good or service.
    - Indirect effects occur to industries in the backward linked industries that supply the exporting firm.
    - Induced effects result from households spending some of the additional income they receive in the local area.
- (Source: Dr. Wayne Miller study, *Economic Multipliers: How Communities Can Use Them for Planning*, subsequently cited)



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# Important Points, Cont'd

- Geographic Dilemmas
  - Push-pull between Regional Center boundary and region defined for multipliers.
  - Targeted and narrowly defined for regional center boundary.
  - Broadly defined for regional impact analysis.
  - Must be large enough to serve as a functional economic unit. Should encompass a region that provides most of the inputs for production.

\*Labor is a major input—look at commuting patterns.\*



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# Where to get more information?

- Bureau of Economic Analysis
- Census Bureau
- Bureau of Labor Statistics (LAUS)
- Small Business Administration
- National Associations
- Helpful studies that further define direct effects and geographic scope:
  - Dr. Wayne Miller, *Economic Multipliers: How Communities Can Use Them for Planning:*  
[http://www.uaex.edu/Other\\_Areas/publications/PDF/FSCED6.pdf](http://www.uaex.edu/Other_Areas/publications/PDF/FSCED6.pdf)
  - Linda Levine, *Job Loss and Infrastructure Job Creation Spending During the Recession:*  
<http://cardin.senate.gov/pdfs/jobloss.pdf>



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# Critical Issue

The business plan and economic analysis  
should be

**TRANSPARENT and REPRODUCIBLE**



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# Common Pitfalls

- Defining the study area incorrectly
- Comparing apples to oranges
- Averaging multipliers
- Treating employment impacts as FTE
- Double counting direct impacts
- Incorrectly identifying initial impacts
- Combining forward linkages with backward linkages



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# Q and A on EB-5 Economic Analysis

- The Big Picture
- Important Points
- Sources of Information
- Critical Issue
- Common Pitfalls



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# IV. Stakeholders Suggested Topics & Questions

- Crediting Job Creation Outside the RC
- Reporting EB-5 Fraud & Misrepresentation to USCIS
- RC Termination Process
- Reporting RC Terminations to the Public
- RC Termination Impacts on Affiliated Petition Filings
- Material Changes Post-Filing Form I-526
- CSPA Act



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# Crediting Job Creation Outside the RC

- Section 610(a) of the Departments of Commerce, Justice and State, the Judiciary, and Related Agencies Appropriations Act of 1993, Pub. L. 102-395, as amended, provides that
  - A regional center shall have jurisdiction over a limited geographic area, which shall be described in the proposal and consistent with the purpose of concentrating pooled investment in defined economic zones.
- USCIS's regulation at 8 CFR 204.6(m)(3)(i) requires, in pertinent part, that each regional center must provide a proposal which *clearly describes how the regional center focuses on a geographic region of the United States* (emphasis added).



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# Crediting Job Creation Outside the RC,

## Cont'd

- USCIS has interpreted that a regional center should focus its EB-5 capital investment activities on a single, contiguous area which is within the bounds of the limited geographic area for which a regional center requests jurisdiction.
- Beyond these statutory and regulatory directives there are no specific mandates that indirect jobs be created in any particular location.
- There is an exception pertaining to Targeted Employment Areas (TEAs). INA 203(b)(5)(B)(i) provides that a certain number of visas made available under the EB-5 category “be reserved for qualified immigrants who invest in a new commercial enterprise ... which will create employment in a targeted employment area” (emphasis added).



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# Crediting Job Creation Outside the RC,

## Cont'd

- 8 CFR 204.6(e) define a TEA as “an area which, at the time of investment, is a rural area or an area which has experienced unemployment of at least 150 percent of the national average rate.”
- A reduced capital investment amount of \$500,000 is permitted for a TEA. If a proposed RC business plan in the Form I-526 includes a TEA and the petitioner is relying on a capital investment of \$500,000 in a new commercial enterprise rather than \$1,000,000, the predicted jobs created must be within the TEA.



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# Crediting Job Creation Outside the RC,

## Cont'd

- This interpretation of the statutory and regulatory language does not justify job creation data methodologies that are not reasonable. While the RC's EB-5 capital investment activity may produce a legitimate economic benefit outside its formal jurisdictional RC boundaries, the data set used to estimate job creation should fit within the intended impact of the capital investment project.
- Where appropriate, regional data should be used as the basis for a regional center's job creation analysis in keeping with 8 CFR 204.6(m)(3)(i). USCIS may not accept statewide data or data from a broader area outside a regional center as suitable for the job creation analysis when regional data is readily available that focuses solely on an RC's geographic area.



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# Crediting Job Creation Outside the RC,

## Cont'd

- The scope and nature of industries present in an entire state or in an area outside the geographic boundaries of an RC may not be comparable to the more limited scope and nature of the industries within the RC's jurisdictional area and included in the data for the region.
- However, if the prospective impacts of the capital investment project provided in the project's business plan and associated economic analysis indicate that a broader geographic area should be considered, USCIS will do so.



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# Reporting EB-5 Fraud & Misrepresentation to USCIS

- Many USCIS External Stakeholders have expressed concerns regarding the potential for fraud and misrepresentation within the EB-5 program.
- USCIS takes allegations regarding EB-5 program malfeasance very seriously. EB-5 ISOs follow established USCIS procedures for referring cases to the Fraud Detection & National Security Directorate (FDNS) when an EB-5 case appears to contain fraud or material misrepresentations.
- General information about FDNS can be found on the USCIS website [www.uscis.gov](http://www.uscis.gov) at: Home > ABOUT US > Directorates and Program Offices > Fraud Detection and National Security.



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# Reporting EB-5 Fraud & Misrepresentation to USCIS

- Members of the public may report instances of fraud or misrepresentation to the EB-5 mailbox at [Uscis.immigrantinvestorprogram@dhs.gov](mailto:Uscis.immigrantinvestorprogram@dhs.gov).
- It is helpful if the information provided contains specific information relating to the allegations of fraud or misrepresentation, supported by documentation, if possible.
- Information of this nature that is received through the EB-5 mailbox will be reviewed by EB-5 program staff, and if it appears to be credible, may be provided to the affected party in an EB-5 case in accordance with 8 CFR 103 and 205 as part of an adverse case action. Such information may also be provided to FDNS through established USCIS procedures.



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# RC Termination Procedures

- USCIS may terminate the status of an approved RC under the termination procedures provided in 8 CFR 204.6(m)(6), upon a determination that the RC no longer serves the purpose of the Pilot Program by promoting economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment.
- USCIS must notify the RC through the issuance of a Notice of Intent to Terminate (ITT) of the reasons for termination and provide the RC with 30 days to provide evidence in rebuttal of the issues raised in the ITT.
- If USCIS determines that the RC's participation in the Pilot Program should be terminated, USCIS shall notify the RC of the decision and of the reasons for termination. As provided in 8 CFR 103.3, the RC may appeal the decision to USCIS within 30 days after the service of notice.



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# RC Termination Procedures, Cont'd

- USCIS will notify the public via the USCIS website of the termination of any previously approved RC, upon the completion of the administrative appeals process in the matter, if any.
- If USCIS determines that the RC's response to the ITT overcomes the reasons for termination, then USCIS shall affirm the approval of RC's designation for participation in the Pilot Program in writing.
- Note: Amended 8 CFR 204.6(m)(6), which takes effect 11/23/2010, provides for the termination of an RC using the procedures outlined above if an RC fails to provide an RC fails to submit required information of its EB-5 activities (Form I-924A).



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# Filing of New Form I-526 Petition – Prior to Gaining CPR Status

- An alien may opt to file a new Form I-526 petition, and if approved, may use the new petition as the basis for applying for adjustment of status or for an immigrant visa with DOS.
- It would be helpful if the alien would request to withdraw the previous Form I-526 petition.



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# Material Changes Post-Filing Form I-526

- What is the relationship between an approved Form I-526 petition and the Form I-829 petition in establishing EB-5 eligibility?
- Each alien investor must file a Form I-526 petition to establish his or her eligibility for classification as an EB-5 alien investor.
- If approved, the business plan (and the economic analysis in the case of an RC-affiliated new commercial enterprise) provided in support of the Form I-526 petition describes how the investor is going to satisfy the requirements of the EB-5 program, and, therefore, removal of conditions at the Form I-829 petition stage
- *Chang v. United States of America*, 327 F. 3d 911 (9<sup>th</sup> Cir. 2003)  
In *Chang* the court stated that although the adjudication of the I-829 is not a re-adjudication of the I-526, the Form I-526 approval may not be “decoupled” from the I-829 approval. The court further stated that Form I-829 approval is predicated by the Form I-526 approval and the “successful execution of the approved plan.”



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# Child Status Protection Act of 2002 (CSPA)

- CSPA amended the Immigration and Nationality Act (Act) to permit an applicant for certain immigration benefits to retain classification as a child under the Act, even if he or she has reached the age of 21, (i.e, has “aged-out”).
- CSPA added section 201(f) for applicants seeking to qualify as Immediate Relatives and section 203(h) for applicants seeking to benefit under a preference category, including derivative beneficiaries.
- CSPA may provide limited age-out protection to certain EB-5 dependent children. USCIS is currently reviewing its existing CSPA guidance to ensure that such beneficiaries are protected to the extent permitted by law.



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# Child Status Protection Act of 2002 (CSPA), Cont'd

- Investors who have dependent children who are nearing their 21st birthday should be aware that an EB-5 dependent child must be under the age of 21 years at the time of filing of the Form I-526 petition in order to qualify as a derivative beneficiary. The dependent children must meet the definition of child as modified by the CSPA at the time the immigrant visa is issued (or approval of the I-485).
- CSPA may protect some dependents from “aging out.” Essentially, the time the Form I-526 was pending (from filing to approval) can be subtracted from the child’s age on the date a visa becomes available (per the visa bulletin or the petition’s approval date, whichever is later) as long as the child seeks to acquire lawful permanent residence within one year of visa availability (filed Form I-824 or I-485 with USCIS or submitted DS-230 to Department of State).



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# Questions?



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